



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
15 Flanders Memorial Road
P.O. Box 190
Weare, NH 03281
Phone: (603) 529-2250
Fax: (603) 529-4554

Naomi L. Bolton
Land Use Coordinator

Office Hours:
Monday
Tuesday
Thursday
8 AM – 4:30 PM

**ZONING BOARD OF ADJUSTMENT
MINUTES
NOVEMBER 16, 2004
DRAFT COPY**

PRESENT: Tim Galvin, Chairman; Forrest Esenwine, Vice Chairman; June Purington; Matt Pelletier, Alternate; Naomi L. Bolton, Land Use Coordinator

GUESTS: Art Siciliano; Jan Smith; Jude Charpentier; Ginger Esenwine; Ricky Houde; Beverly Malden; Heidi Nippe; Tom Malden; Paul Apple, Esquire; Ron Nippe.

I. INTRODUCTION:

Chairman Tim Galvin called this meeting to order at 7:30 PM at the Weare Town Office Building. Chairman Galvin appointed Matt Pelletier as a voting member for tonight's meeting.

II. ADMINISTRATIVE ITEMS:

Chairman Galvin stated that for tonight's meeting we have a request by the Nippe's to be moved to the front of the agenda. Therefore, the order as it was posted will be handled in the reverse.

III. PUBLIC HEARINGS – CONTINUED FROM NOVEMBER 16, 2004

Case #2704 Reynold & Heidi Nippe
Special Exception, Article 19, Section 19.1.10
Variance, Article 19.1.10.2
Applicant is requesting permission to have the in-law apartment attached to the detached garage rather than the home structure.
Tax Map 110-089 71 Daniels Road (Private Road)

Reynold & Heidi Nippe were present. Mr. Nippe turned the floor over to his attorney, Paul Apple from the law offices of Griffin and Owen out of Amherst, NH. Attorney Apple stated that he is here with a request for a special exception with a "twist" of a variance. There is currently a garage on the lot. The Nippe's are requesting a variance from the special exception request for three sections. The first is that the size of the apartment, which will be 30 x 30 completely ADA designed. First, article 19.1.10.1 states that the apartment shall not exceed 650 square feet and this apartment as proposed is 900 square feet. Secondly, article 19.1.10.2 states that the apartment shall be constructed within or attached a single family dwelling. They are proposing the apartment to be added to their garage,

not the single family home. Lastly, Article 19.1.10.3 states that the apartment must have at least one interior connecting door to allow persons to pass between the two buildings. This application does not have, as it is not at all attached to the existing dwelling.

Chairman Galvin explained that the board will consider the special exception first, because if the special exception doesn't pass then the variance is a moot point.

Attorney Apple agreed and then addressed the seven conditions needed for a special exception as follows:

1. The specific site is an appropriate location for such a use or uses in terms of overall community development: With respect to overall community development, the specific site is an appropriate location for the requested use. Being a residential area, on a private road, the addition of this use fits right in with the surrounding area. This in-law addition will enhance our and the community's ability to care for our elderly relatives.
2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area: The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighborhood. We have canvassed and discussed this proposal with most of our immediate abutters, Arthur Siciliano, and several licensed real estate appraisers. It is agreed that this proposal will be yet another long list of property improvements we have made at 71 Daniels Road. A licensed NH appraiser has written an opinion on this property value question, a copy of which is attached to the Variance Request.
3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: With regard to the impact on vehicular traffic; being situated on a private dirt road, a dead end road, there is no traffic with the exception of residents and the occasional lost driver.
4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: With regard to the question of causing any undue burden to the Town through the provision of basic services; we will be housing 2 elderly parents. No children will be present to add to the school system, and as we currently receive no direct services from the town, no burden will be added.
5. Adequate off-street parking is provided if determined necessary by the Zoning Board of Adjustment: Off street parking; Private driveway for the occupant's vehicle.
6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees: To provide privacy for neighbors, we have installed an extension of the privacy fence previously installed on the Turner/Nippe property line. Additionally, we will be installing another fence on the Cota/Nippe property line to provide Mr.

Cota with the same privacy. Both fences are being installed without being requested by the abutters.

7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section: With regard to the Zoning Board's restrictions or conditions, we are aware that the Zoning Board may impose restrictions and conditions.

Being there were no questions from the board, Chairman Galvin asked if there were any:

Approving Abutters: NONE

Disapproving Abutters: NONE

Public At Large: NONE

Other Boards: NONE

Chairman Galvin then closed the hearing on the special exception portion of the hearing for the board to deliberate amongst themselves.

June Purington stated that she has a concern with this request because in essence the board would be creating a huge precedent allowing two separate residences on a half acre. Mrs. Purington stated that she is sympathetic with the situation, but creating two residences on half an acre on a private road is really asking a lot.

Mrs. Nippe explained that they are currently changing the entrance and roof line of the existing home and they will be attaching a covered walkway from the house to the apartment. So if you entered the driveway it would look like one unit.

Attorney Apple rebutted the comments made by Mrs. Purington regarding precedent setting. Attorney Apple stated that this board has the ability of looking at each case differently, as the zoning board is the guardians of the ordinance.

Attorney Apple also stated that in his opinion this is really not two dwelling units as the power, septic and well are shared.

Forrest Esenwine stated that he felt that the board should think about what is being granted, because any special exception that might be granted is being granted to the land and not the current situation as it is now.

CASE DECISION (SPECIAL EXCEPTION ONLY):

Condition #1: Forrest Esenwine moved to accept condition #1, June Purington seconded the motion. Discussion: Mr. Esenwine stated that he didn't think the site was appropriate. The area is currently woefully compacted. When the lots were originally laid out it was for camp lots, with no septic systems or year round homes. From there we have gone to full blown year round, septic system homes on small lots. To add a structure like this on a small ½ acre lot is not appropriate. Chairman Galvin stated that the residential zone makes it appropriate, but attaching a residence to a detached non-dwelling unit on the small ½ acre lot is

not appropriate. Vote: 0 in favor and 4 opposed (Purington, Pelletier, Galvin, Esenwine). Condition #2: June Purington moved to accept condition #2, Matt Pelletier seconded the motion. Discussion: Mr. Esenwine stated that we have a letter from an appraiser, which one could view as argumentative. There is nothing to dispute the professional opinion as a basis of fact. Vote: 3 in favor (Purington, Galvin, Esenwine) and 1 opposed (Pelletier). Condition #3: June Purington moved to accept condition #3, Matt Pelletier seconded the motion. Discussion: Mr. Esenwine stated that we are all familiar with the road and this request has a minimal trip impact. Vote: 4 in favor (Purington, Pelletier, Galvin, Esenwine). Condition #4: June Purington moved to accept condition #4, Matt Pelletier seconded the motion. Discussion: Mrs. Purington stated that the point has been brought up that the special exception is granted to the property and not the individuals. The current situation certainly has no impact on the Town services in today's situation, but if the property was sold it could be rented to a family that could have school age children in the future. Vote: 1 in favor (Pelletier), 2 opposed (Purington, Esenwine) and 1 abstention (Galvin). Condition #5: Forrest Esenwine moved to accept condition #5, June Purington seconded the motion. Discussion: None. Vote: 4 in favor (Purington, Pelletier, Galvin, Esenwine). Condition #6: June Purington moved to accept condition #6, Matt Pelletier seconded the motion. Discussion: None. Vote: 4 in favor (Purington, Pelletier, Galvin, Esenwine). Condition #7: Chairman Galvin stated that he felt there wasn't any the reason for conditions.

Attorney Apple asked if the board would accept their offer of a remedy to be used as conditions or restrictions, particularly hearing some of the issues raised in conditions 1 and 4, prior to the board making their vote.

Chairman Galvin stated that one of the concerns that he has expressed with other cases, he didn't think that we can render a really well thought out decision. Mr. Esenwine stated that he disagreed. He felt that the board has discussed and debated it and a decision could be made. The special exception if granted would allow them to put AN in-law apartment on the property. Then the board would entertain the variance part to the special exception if successful.

Forrest Esenwine moved to grant the special exception for Case #2704, Matt Pelletier seconded the motion. Vote: 0 in favor and 4 opposed (Purington, Pelletier, Galvin, Esenwine). The reason for denial is that according to state law, all of the seven conditions must be met in the affirmative in order for the special exception to be granted. In this case condition #1 relative to the specific site being appropriate for the request failed as did condition #4 relative to an undue burden to the Town through basic town services, which also failed.

Case #2604 Acer Corporation (Owner: Frank Piazza)
Variance, Article 17, Section 17.1.1
Applicant is requesting permission to build a single family home on a private road.

Jude Charpentier was present for this hearing. Mr. Charpentier stated that he currently has a purchase and sales agreement with Mr. Piazza to buy the property only if he is successful in obtaining a variance. Mr. Charpentier stated that he would like to buy the lot and build a new single family home on Winter Road, which is a private road. Mr. Charpentier went through the five points of hardship as follows:

1. That there will not be a diminution of value surrounding properties as a result of the granting of this variance because: construction of a new single family home will enhance values on existing properties in the subdivision. A new home would be of equal size or larger.
2. That the granting of the variance will not be contrary to the public interest because: construction of a new single family home will conform to existing homes located in the subdivision.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - a. As applied to the petitioner's property will interfere with the petitioner's reasonable use of their property, considering the unique setting of the property in its environment for the following reasons: Zoning Ordinance – 17 section 17.1.1 "No building permits for new homes shall be issued on any Class VI or Private Road." 1) The hardship would be not being allowed to construct a new single family home. 2) There would be no other use for this property.
 - b. As specifically applied to the petitioner's property has no fair and substantial relationship to the general purposes of the zoning ordinance for the following reasons: There are 17 existing houses which were built between 1950 and 1999. There are existing homes before and after said property. Emergency vehicles have ample access and association maintains the private road for a yearly fee of \$300 per home. We would become a member of the association. There is signage indicating that it's a private road.
 - c. If relieved by a variance, will not injure the public or private rights of others for the following reasons: There would be no negative effect on others by building a new single family home, would only enhance the values of existing properties.
4. That through the granting of relief by variance substantial justice will be done because: Owner can now obtain building permit to build a single family home on lots owner has been paying taxes on.
5. The use, for which the variance is requested, will not be contrary to the spirit of the ordinance because: constructing single family home in existing residential neighborhood.

Being there were no further comments or questions, Chairman Galvin then asked for:

Approving Abutters: NONE

Disapproving Abutters: Janet Smith, abutter to the rear of this parcel was present. Mrs. Smith stated that she is here in support of what the Town voted in. This happened on Thurber Road a couple of years ago and she would like to see that it not happen again.

Public At Large: NONE

Other Boards: NONE

Chairman Galvin closed this hearing at 8:54 PM.

Chairman Galvin has a couple of concerns. If this relief is granted it is going to be done for a spec house and he is concerned that in a general sense there is a lot of factual data that we haven't been provided to allow the board to make a fully informed decision.

CASE DECISION:

Point #1: June Purington moved to accept point #1, Forrest Esenwine seconded the motion. Discussion: Chairman Galvin pointed out that while the typical logic of what has been and what is existing is not shown, and the testimony given doesn't show any factual basis. It is hypothetical. Vote: 0 in favor and 4 opposed (Purington, Pelletier, Galvin, Esenwine). Point #2: June Purington moved to accept point #2, Matt Esenwine seconded the motion. Discussion: Mr. Esenwine stated that the public interest was to pass an ordinance to say don't do this, also by doing it in an area that says doesn't do it could increase the burden on the town with regard to schools. Mr. Pelletier stated that it might be tough to fight a house fire if the road is not maintained. Chairman Galvin stated that the testimony of the applicant states that there is a road association, but that is not public interest. Vote: 0 in favor and 4 opposed (Purington, Pelletier, Galvin, Esenwine). Point #3a: June Purington moved to accept point #3a, Matt Pelletier seconded the motion. Discussion: Chairman Galvin's initial question has to do with grandfathered, which the window of opportunity was closed a while ago. He didn't hear anything in the testimony that pointed to the uniqueness of the property. Mr. Esenwine stated that the unique setting is that it is not on a Town road. It is on a private road. The uniqueness has to do with the property and not the area. Vote: 1 in favor (Purington) and 3 opposed (Pelletier, Galvin, Esenwine). Point #3b: Matt Pelletier moved to accept point #3b, June Purington seconded the motion. Discussion: Chairman Galvin stated that the homes that are there were there pre-ordinance really can't be considered as a factual basis for granting the relief sought. Mr. Esenwine stated that what the applicant has pointed out in the answer is that this particular property may not have a general relationship to some of those things. Chairman Galvin stated that he hasn't heard anything to convince him. Mr. Esenwine stated that he can't get past the 17.1.1. The article was passed for a very specific purpose and, whether there are houses on this road or any road, doesn't change the fact that this ordinance was written for a purpose, but there is no reason why the board has to continue to violate the ordinance. Vote: 1 in favor (Purington), 2 opposed (Galvin, Esenwine) and 1 abstention (Pelletier). Point #3c: June Purington moved to accept point #3c, Matt Pelletier seconded the motion. Discussion: Mrs. Purington stated that

she always has a problem with the response that building another new home on a road will increase the property values on a road. She has 40 homes being built above her house on her road and she doesn't feel it is increasing her value. Mr. Esenwine stated that we also have to consider the fact that we have an abutter coming in indicating she didn't want to see another house. Chairman Galvin stated that he applauds an abutter to speak in favor of or in opposition of, which the abutter only echoed her sentiment of what the Town voted in should be upheld. There is no factual information given tonight, to find in the affirmative. Vote: 1 in favor (Esenwine) and 3 opposed (Purington, Pelletier, Galvin). Point #4: June Purington moved to accept point #4, Matt Pelletier seconded the motion. Discussion: Chairman Galvin's only comment is that a variance is made to the land and not the individual and that a decision is to be made on the testimony that has been offered. The Town has been quite clear in its delineation for managing growth in the Town and we have a needed obligation to uphold the Town's regulations. Vote: 0 in favor and 4 opposed (Purington, Pelletier, Galvin, Esenwine). Point #5: June Purington moved to accept point #5, Matt Pelletier seconded the motion. Discussion: Mr. Esenwine stated that the spirit of the ordinance is to not build any more homes on a private road and this would violate that. Chairman Galvin stated that he is going back to the issue, is there any factual details or testimony given to support granting this. Vote: 0 in favor and 4 opposed (Purington, Pelletier, Galvin, Esenwine). Forrest Esenwine moved to grant the variance on Case 2604, June 2nd the motion. For the reason that based on the statute all five (5) points must be met. Vote: 0 in favor and 4 opposed (Purington, Pelletier, Galvin, Esenwine).

VI. ADJOURNMENT:

As there was no further business to come before the board, Forrest Esenwine moved to adjourn at 9:20 PM, June Purington seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator